PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-3883**
AUGUST 19, 2004

R E S O L U T I O N

Resolution E-3883. San Diego Gas and Electric Company requests approval for a deferment of the online requirement date of December 31, 2003, to June 30, 2005, for a wind power contract originally authorized under Commission resolution E-3803.

By Advice Letter 1594-E Filed on May 21, 2004.

SUMMARY

SDG&E's request to extend the online start date of a previously approved wind energy contract is approved.
San Diego Gas and Electric Company (SDG&E) filed Advice Letter (AL) 1594-E on May 21, 2004, requesting Commission approval to modify the required online date from December 31, 2003 to June 30, 2005 for a wind energy contract already approved under Commission Resolution E-3803. The contract was originally obtained through an SDG&E Request For Offers (RFO) issued in September 2002.

SDG&E demonstrated that the contract confers price and other ratepayer benefits.
The subject contract was originally solicited under SDG&E's September 20, 2002 general RFO under a separate renewable energy RFO. SDG&E made a sufficient showing that this contract is in the ratepayer's interest because it meets SDG&E's obligation to procure renewable resources at prices at or below the Price Benchmark provided in D.02-08-071. Due to the generator's inability to deliver by the originally negotiated online start date, the contract was renegotiated giving SDG&E an even lower per MW price as a concession for a later online start date. Approval of this contract provides SDG&E more certainty that it would meet its annual renewable procurement target because the project is scheduled to be operational no later than June 2005.

SDG&E's Procurement Review Group either supported or did not oppose the approval of the initial contract or its extension.
The members of SDG&E's Procurement Review Group (PRG) either supported or did not oppose the approval of the initial contract and either supported or did not oppose SDG&E's proposed extension of the online date for this contract or the revised pricing under the renegotiated contract.

Confidential information about the contract should be publicly revealed.
Commission's approval of this resolution discloses information about the amended contract that SDG&E has filed as confidential. Energy Division believes that the benefit of publicly disclosing the confidential information, including pricing information, outweighs the value of keeping the information confidential.

BACKGROUND

The Commission provided guidance to the utilities on procuring renewable energy resources prior to the full implementation of the Renewable Portfolio Standard (RPS) Program.
Assembly Bill (AB)X11, chaptered on February 1, 2001, granted authority to DWR to buy and then sell retail electric power to the customers of SDG&E, Southern California Edison (SCE), and Pacific Gas and Electric Company (PG&E). It required DWR to enter into contracts for the purchase of electric power to meet the utilities' energy requirements net of existing resources until January 1, 2003.

On July 3, 2002, AB 57 was enrolled[1], adding Section 454.5 to the Public Utilities (PU) Code, to provide guidance to the utilities and the Commission for the procurement of electricity and electricity demand reduction products. The bill requires the Commission to review and adopt a procurement plan for each utility in accordance with specific plan elements and objectives to ensure that no later than January 1, 2003 the utilities resume procurement for those needs that will no longer be met by DWR.

1. [1] The provisions of this bill were subsequently chaptered into law on September 24, 2002 in Senate Bill 1976.

In response to AB 57, the Commission issued D.02-08-071 on August 22, 2002. This decision ordered a separate renewables solicitation by each utility for at least one percent of their actual energy and capacity needs. This is roughly equivalent to the Renewables Portfolio Standard Program (RPS) approach enacted in Senate Bill (SB) 1078[2] and reflected in AB 57. D.02-08-071 was issued in anticipation of SB 1078's passage; therefore the decision's requirements were conformed to the controlling language of the bill.

The Commission required the utilities to establish a Procurement Review Group to analyze and make recommendations pertaining to proposed contracts.

The Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of each utility's:

1. Overall transitional procurement needs and strategy;
2. Proposed procurement processes including, but not limited to, the RFOs; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review and approval.

The PRG for SDG&E is comprised of the California Energy Commission (CEC), California Farm Bureau Federation, Department of Water Resources (DWR), the Commission's Energy Division, Natural Resources Defense Council (NRDC), Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), and Utility Consumers Action Network (UCAN).

In 2002, the Energy Division reviewed and recommended, and the Commission approved, the subject wind energy contract.

Following the utilities' evaluation of the RFO solicitation process, each utility must file by advice letter its proposed contract(s), documentation supporting procurement process steps and evaluation methodology, and PRG

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2. [2] SB 1078, chaptered on September 12, 2002, requires the Commission to establish a program whereby the utilities must purchase a specified minimum percentage of electricity generated by renewable energy resources. The utilities must increase their total procurement of eligible renewable energy resources by at least one percent per year so that 20 percent of its retail sales are procured from eligible renewable energy resources by December 31, 2017.

recommendations. As stated in Appendix B of D.02-08-071, approval of the advice letter would constitute a determination by the Commission that costs incurred by the utility under this contract itself and/or under contracts conforming to the procurement process are "reasonable" and "prudent" for purposes of recovery in retail rates under the PU Code for the full term of the contract(s).

The Energy Division examines IOU proposed contracts on multiple grounds: solicitation of the bids, evaluation of the contracts, bid selection, and PRG involvement, and performed a detailed analysis prior to recommending the Commission approve this wind energy contract.

On September 20, 2002, in response to D.02-08-071, SDG&E issued an RFO for renewable capacity and energy products for minimum block sizes of 1 to 10 MW. As a result of this RFO, on November 2, 2002, SDG&E filed AL 1445-E, requesting Commission approval for the renewable energy contracts selected as a result of its renewable RFO. In response to AL 1445-E, Energy Division recommended and the Commission adopted Resolution E-3803 authorizing SDG&E to enter into the wind energy contract subject of this resolution. Contracts authorized by the Commission under D.02-08-071 must be online by December 31, 2003.

D.03-05-035 allows the Commission to alter the contract's required online start date for good cause.

On May 8, 2003, the Commission adopted D.03-05-035, which allows the Commission the flexibility to alter the 2003 online requirement date for contracts procured under D.02-08-071 when the Commission determines that good cause exists.

D.03-05-035 specifically states:

> Whether or not good cause has been shown to depart from the 2003 online date, and what online date should be imposed in lieu of the 2003 online date, will be a fact specific determination of the Commission to make in connection with a particular PPA.

The Energy Division has recommended the extension of other contracts in the past and the Commission has found "fact-specific" determination of good cause.

In particular, in D. 03-05-035 the Commission found the following as comprising "good cause" in granting the requested contract extension:

1. The proposed Power Purchase Agreement (PPA) were the result of an open and competitive bid solicitation that notified all bidders that proposals would be considered for renewable energy projects that did not meet the 2003 online requirement set forth in D.02-08-071.

2. The proposed PPA contained reasonable prices and terms, provided for reliable renewable power, and did not displace any comparable bidders

3. A factor in the failure of the PPA was an effect to Commission action or inaction, which had a role in delaying the project.

SDG&E is requesting an amendment to the original approved contract.
SDG&E is requesting to extend the required online date of the original wind energy contract approved under E-3803 as the provider was unable to meet the requirement to begin delivering power in 2003. SDG&E filed AL 1594-E on May 21, 2004, requesting Commission approval to modify the online requirement date from December 31, 2003 to June 30, 2005.

Recent Commission decisions have implemented the RPS program and SDG&E has initiated its solicitation for 2004.
The Commission has implemented the RPS program via recent Commission decisions[3] and the adoption of SDG&E's 2004 renewable procurement plan[4]. Furthermore, the adopted procurement plan granted SDG&E the authority to issue their 2004 RPS RFO, which SDG&E issued on July 1, 2004.

NOTICE

Notice of AL 1594-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

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[3] D.03-06-071, D.04-06-013, D.04-06-014, D.04-06-015, and D.04-70-029

[4] Letter from Energy Division Director (SDGE Plan Appl1.doc), dated June 28, 2004.

PROTESTS

Advice Letter AL 1594-E was not protested.

CONFIDENTIALITY

This resolution contains confidential information, which SDG&E has requested remain redacted in the public version of this resolution. The unredacted version of this resolution will identify the portion of the resolution that SDG&E has requested remain confidential with the text appearing **[underlined in brackets]**. Accordingly, text in the public version of this resolution marked "[REDACTED]" indicates where information remains confidential. Energy Division recommends that upon approval by the Commission, the redacted portion of this resolution, which includes pricing information, should be publicly disclosed.

We have considered whether, and to what degree, to disclose information submitted to us under seal. It is incumbent upon this Commission to keep sensitive information confidential while still making plain to the public at large the bases for Commission decisions. In the final analysis, it is the Commission's responsibility to make decisions in the light of day, and we give that obligation great weight in determining whether commercial information is of such critical sensitivity as to override broader public concerns. In this instance we agree with Energy Division's recommendation, and thereby disclose the information marked as [REDACTED] upon approval of this resolution.

DISCUSSION

Terms of the Amendment Are in the Ratepayer's Interest

[REDACTED – **The payment schedule is amended.**
Oasis Power Partners, LLC / EnXco, Inc. (the Seller) and SDG&E have agreed to extend the deadline by when the 60 MW facility must achieve commercial operation. In exchange, the Seller has agreed to amend the pricing provisions of the contract. In addition, the amendment further modifies the scheduling and payment provisions. The amendment provides that SDG&E will pay monthly based on MWh scheduled to SDG&E for that month. Annually the parties will reconcile and net any differences between actual monthly metered and scheduled amounts for

the previous twelve months. This true-up will be done annually or sooner if the scheduled energy exceeds the metered energy by 10,000 MWhrs. SDG&E will receive all the renewable energy credit (RECs) from energy actually produced from the facility. Ratepayer's will benefit from this revised scheduling and payment arrangement in that rates will reflect the amount of wind power actually metered as opposed to the estimated amount scheduled.

Oasis and SDG&E modified the payment schedule as described above because the financiers of the Project were not willing to take the risk on having to pay the ISO for scheduled energy that was delivered to SDG&E when the metered energy was less.

The per megawatt price is reduced

In addition, as a concession for negotiating an extended online start date, Oasis is lowering is rate to $49.20/MWh (from $50.20/MWh) for all units complete by 12/31/04 and to $48.20/MWh for all subsequent units.

The online date is amended

On or before June 30 2004, Oasis will provide a notice of intent that it is either able or unable to proceed with completion of the project. If it will not proceed, the agreement terminates with not liability on either part.

On or before October 15, 2004, Oasis may terminate the agreement if federal legislation to extend the Production Tax Credit has not become law. If terminated, neither party will have further liability. Failure to send such notice is deemed a waiver of Oasis's right to terminate.

The targeted completion date is June 30, 2005. After that date, SDG&E may terminate the transaction regarding any uncompleted units. If SDG&E sends notice to terminate, Oasis will pay SDG&E $25,000 for each megawatt not completed unless Oasis has completed at least 40 MW in which case there will be not payment.

Termination fees are revised

If Oasis fails to complete at least 20 MW by June 30, 2005, SDG&E may terminate the entire transaction and Oasis will pay SDG&E $1,500,000 ($25,000/MWX60MW).

The RECs are reassigned

As a necessary component of the approval of this amendment, SDG&E also requests that the Commission authorize SDG&E to apply all annual netted MWh up to the annual reconciled scheduled amounts towards SDG&E's Renewable Portfolio Standard Annual Procurement Target (RPS APT). SDG&E therefore is only seeking authorization to count towards its RPS APT the RECs associated with energy purchased from the Seller and received on an annual basis.

The term length remains the same

The term length remains unchanged from the previously adopted contract as stated:

"Beginning on the completion date of the first turbine described and included in the Project (regardless of rated capacity) and ending the fifteenth (15th) anniversary date of (x) the Date when the Project achieves Commercial Operation for all units in the Project or, if the Project does not achieve Commercial Operation for all units in the Project, by the Completion Deadline, (y) the Completion Deadline. Each annual period commencing with (x) or (y), as applicable, constituting a "Contract Year".

Based on this contract language, Energy Division expects the contract term to end fifteen years from the date that all project units come online, or the completion deadline date stipulated in the contract as June 30, 2005 if all the units do not come online by this deadline date.]

Various factors contributed to the subject wind-energy provider not meeting the originally negotiated online date.

The subject wind energy provider was not able to meet the originally negotiated online date due to several factors, as described by SDG&E below:

- The equity and debt participants of the project required changes to the PPA before they would commit to financing the project. Many months were spent developing the necessary language that was finally acceptable to the developers, the financiers of the Project, and SDG&E.

- Relevant provisions related to CAISO's Participating Intermittent Resource Program were challenging to all parties due to delays in implementing the program and the lack of any significant operating history. All were concerned with who would take the imbalance risk and what would happen if the CAISO's Participating Intermittent Resource Program was terminated or modified substantially to the determent to either party. Many months were spend working out the relevant contract changes.

- According to discussions with Oasis, the completion of the Interconnection Facilities Agreement with Southern California Edison took much longer than anticipated. There was a discussion between Edison, the ISO and the transmission line owner as to who had jurisdiction over the scheduling of the line. The discussion commenced on July of 2003 and was not resolved until April of 2004.

- The uncertainty that the Production Tax Credits would be extended past the end of 2003 caused Oasis and its equity and debt participants to slow down pursuing the project near the end of 2003.

Price concessions and the development of renewable energy resources establish good cause to support the approval of the contract extension.
In accordance with D.03-05-035, SDG&E requests Commission approval to depart from the requirement that this wind energy contract, approved under Resolution E-3803, be required to come online and begin delivering electricity before 2004 on the basis that good cause exists for an extension of the required online date.

The contract has been amended to include certain concessions which will result in an increase in SDG&E's overall portfolio of renewable energy eligible to meet ongoing annual renewable portfolio standard targets at a decrease in price from the original contract and significantly lower than the price benchmark established in D.02-08-071. [REDACTED: Energy Division notes that the contract's per MW rate was further reduced to $49.20/MW as a concession of SDG&E and Oasis renegotiating an extended online date. ED finds this rate highly competitive and significantly below the benchmark price set by D.02-08-071 ($53.70/MW). The rate will further be reduced to $48.20/MW for units coming online after December 31, 2004.]

Energy Division concludes that good cause has been demonstrated for the extension to the online start date as the amended contract provides a benefit to ratepayers. The extension should be granted.

The subject wind contract will help SDG&E meet its 1% renewable Annual Procurement Target (APT).

The subject wind contract represents 1.1 % of SDG&E's APT for 2005. SDG&E will continue to issue RFOs as needed and has stated that it must procure an average of 2.5% renewable energy procurement per year in addition to the subject wind energy contract to meet a 20% renewable procurement goal by 2010.

Energy Division finds that the approval of this contract extension serves to bring SDG&E closer to their overall renewable procurement goals at a very competitive rate for the ratepayers and with more certainty since the project is scheduled to be operational no later than June 2005. The developer has a target date for completion of most, if not all, of its planned units by December 31, 2004. It has a strong incentive to deliver by December 31, 2004 because it is set to lose the Depreciation Tax Benefit provided for in the Economic Recovery Act of 2001. These benefits will expire for uninstalled units after December 31, 2004.

The PRG was supportive of the contract amendments and the deferment of the online start date.

In accordance with D.02-08-071, SDG&E sought PRG input with regard to its support of an extension of the required online date. The PRG was supportive of the extension, but urged SDG&E to pursue negotiations and attempt to receive price concessions in return for any extensions. The PRG was updated on the status of the negotiations and type of concessions being discussed; SDG&E provided a summary of the amended provisions and a copy of the executed amendment to the PRG for review on April 27, 2004. After SDG&E answered several questions from PRG members, no PRG member indicated opposition to the amended contract.

We clarify, however, that Energy Division reserved its conclusions for review and recommendation on the contracts to the resolution process. Energy Division had to review the modifications independently, and allow for a full protest period before concluding its analysis.

The subject wind energy project underwent an environmental review to address potential avian mortality rates.

The subject wind energy project was subject to Kern County's permit approval process, which included an environmental impact analysis in accordance with the California Environmental Quality Act (CEQA). As part of that analysis, an avian mortality study was conducted. The county issued a Mitigated Negative Declaration for the project, which did not require any additional mitigation measures for avian species.

Approval of contract will not displace bidders in SDG&E's 2004 RPS RFO.
SDG&E has currently achieved 4.4% of its 2010 RPS target of 20%. Although this project could potentially provide 1.1**%** towards this goal by the end of 2005, SDG&E would still be required to procure an additional **[Redacted** 15%**]** by 2010. In addition to this contract, SDG&E must procure an average of an additional 2.5% of renewable energy per year to meet its long-term goal of 20% by 2010.

In negotiating and submitting the agreement to the Commission for approval, SDG&E took into account the timing of its then upcoming RFO as well as the timing of when the project would seek to come online and the efforts expended in achieving a mutually beneficial agreement. SDG&E does not intend to seek approval of any other bilateral agreement at this time, as SDG&E will be focusing on negotiating agreements resulting from its RFO.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

All parties in the proceeding have stipulated to reduce the 30-day waiting period required by PU Code section 31l(g)(1) to 6 days. Accordingly, this matter will be placed on the first Commission's agenda 16 days prior to the next Commission meeting scheduled for August 19, 2004. By stipulation of all parties, comments shall be filed no later than 4 days following the mailing of this draft resolution. Reply comments will be waived.

SDG&E submitted comments on August 16, 2004. SDG&E supports this draft alternate resolution (DAR), but also requests three modifications to it.
First, SDG&E argues that the disclosure of confidential contract information would harm SDG&E customers and would be inconsistent with the Commission's prior decisions regarding confidentiality including its recent decision on Renewable Portfolio Standard (RPS) standard contract terms and

conditions. Second, SDG&E requests that the resolution expressly authorize SDG&E to apply all annual netted MWh up to the reconciled scheduled amounts towards SDG&E's RPS annual procurement target (APT). According to SDG&E this authorization is necessary to ensure SDG&E customers receive credit for these renewable energy credit (REC) purchases. Third, SDG&E requests a finding that it is authorized to book the costs of the amended contract to its Energy Resource Recovery Account (ERRA).

With regard to SDG&E's first point, Energy Division is not convinced that the release of pricing and specific term agreements will jeopardize future renewable energy contract negotiations for either the seller or the buyer in this case. The terms and pricing structure of the contract were renegotiated due to unforeseen delays in the financing and construction of the project and do not necessarily represent general market conditions that affect negotiations for future contract evaluations.

D.04-06-014 adopted confidentiality guidelines for contracts procured through the Renewable Portfolio Standard (RPS), RFO's. The subject wind energy contract was renegotiated outside of the RPS RFO process adopted in D.04-06-014 and therefore is not subject to these rules of confidentiality.

Regarding SDG&E's remaining comments, this resolution's findings have been modified to clarify that SDG&E has authorization to apply all reconciled RECs (associated with annual netted MWh resulting from the subject contract) to its Annual Procurement Target and that SDG&E has authorization to book the costs of the amended contract to its ERRA in the findings section of this document.

FINDINGS

1. D.02-08-071 required the utilities to offer Standard Offer 1 (SO1) contracts to certain Qualifying Facilities with a term to extend until execution of the utilities' long-term procurement plan or December 31, 2003, whichever came first, including renewable solicitations for at least one percent of their actual energy and capacity needs.

2. On September 20, 2002, SDG&E issued a renewable procurement RFO for energy and capacity products for minimum block sizes of 1 to 10 MWs. The subject wind contract was obtained through this RFO.

3. On December 5, 2002, the Commission adopted Resolution E-3803 in response to SDG&E's Advice Letter (AL) 1445-E filed on November 4, 2002, requesting authorization to enter into the subject wind energy contracts.

4. SDG&E made a sufficient showing that the wind energy contract, obtained under D.02-08-071 and subject of this resolution, is in the ratepayers' interest because it meets SDG&E's obligation to procure renewable resources for prices below the Price Benchmark provided in the decision.

5. On May 8, 2003 the Commission adopted D.03-05-035, which modifies D.02-08-071 to allow the Commission the flexibility to alter the 2003 online requirement date.

6. On May 21, 2004, SDG&E filed an AL 1594-E requesting Commission approval to extend the online requirement date for the subject wind energy contracts.

7. Concessions made during the negotiation of an extended online requirement for the subject wind energy contract resulted in additional benefits for ratepayers.

8. If the generator were required to participate in SDG&E's 2004 RPS RFO, this would cause a major delay in the scheduled on-line date for the project and possibly cause the project to fail.

9. Good cause has been demonstrated for the extension to the online start date and therefore should be granted.

10. SDG&E should apply all annual netted metered MWh up to the reconciled scheduled amount towards its Renewable Portfolio Standards Annual Procurement Target.

11. SDG&E should book the costs of the amended contract to its Energy Resource Recovery Account.

12. The portions of the resolution marked "[REDACTED]" should be publicly disclosed upon approval of this resolution.

13. Advice Letter 1594-E should be approved.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 1594-E is approved.

2. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 19, 2004; the following Commissioners voting favorably thereon:

/s/ STEVE LARSON
STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners